While universal service policy should avoid impeding investment in advanced services, ultimately consumer demand, not regulatory fiat, must be the main impetus behind investment in technologically advanced services in rural areas. And in the meantime, the Commission should take care to avoid sending a mixed message about its established ETC designation criteria.

4. The Universal Service Fund Must Remain Competitively Neutral and Must Not Be Used to Subsidize Rural ILECs' "Stranded Costs"

The RTF properly recommends adhering to the current Commission policy that "[u]nder any circumstances . . ., ILECs and CETCs serving the same area would receive the same amount of support per loop." 44/ Some ILECs, however, also seek compensation from the high-cost fund for so-called "stranded investment." 45/ But the RTF did "not reach agreement on the 'stranded cost' issue." 46/ Assuming that a revenue flow from the high-cost fund for "stranded costs" would not be portable to competitive ETCs, it would not be competitively

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44/ RTF Recommendation at 27-29; *Accord* Comments of the California Public Utilities Commission ("California PUC") at 4-5; Joint Comments of the New York Department of Public Service, Connecticut Department of Public Utility Control, Illinois Commerce Commission and Maryland Public Service Commission (New York *et al.*") at 2-4; Joint Comments of the Maine Public Utilities Commission, Vermont Department of Public Service and Vermont Public Service Board ("Maine and Vermont") at 1-2; National Ass'n of State Utility Consumer Advocates ("NASUCA") at 3.

45/ *See, e.g.*, Bristol Bay Tel. Coop. *et. al* at 2-3; Iowa Telecom. Services, Inc. at 5; Montana Tel. Ass'n at 4-5; Nebraska Rural Telephone Coalition at 4; NTCA at 12-13; United States Telephone Ass'n/OPASTCO/National Rural Telephone Ass'n at 6-7.

46/ RTF Recommendation at 27 n.51.

neutral and therefore should be rejected. 47/ To the extent that any rural ILEC believes it is Constitutionally entitled to compensation for regulatory decisions that deny opportunities to achieve a reasonable return on investment – and all indications are that such cases should be few indeed, given the generous returns earned by most rural ILECs – any such carrier should be required to make an individual showing to that effect, 48/ and should be required to recover any such shortfall from its own end-user customers, *not* from other carriers or from universal service funds.

II. FUNDING LEVELS MUST NOT GROW EXCESSIVELY

The members of CUSC hope to provide supported universal service in areas currently served by rural telephone companies, but they also recognize that even once they begin receiving high-cost support, they are likely to remain net contributors to the universal service program. The CUSC members therefore bring a unique perspective to the debate over funding levels. On the one hand, CUSC has every interest in ensuring that funding is reasonably sufficient to preserve and advance universal service in high-cost areas. On the other hand, CUSC's core principles include ensuring that funds are efficiently targeted and avoiding unnecessary growth in funding levels. This interest coincides with the interests of

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47/ *Cf. Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253*, Memorandum Opinion & Order, File No. CWD 98-90, FCC 00-309, at ¶ 8 (rel. Aug. 28, 2000) (where the Commission expressed its concern about a universal service funding mechanism solely for incumbent local exchange carriers, explaining that such a fund would be a substantial barrier to entry).

consumers across the nation who ultimately pay the cost of high-cost support. This overall perspective on funding levels guides our comments below.

A. The Fund Should Grow by No More than the Amount Recommended by the RTF

The RTF's recommendations on funding levels were based on a delicate balance among competing policy priorities. Essentially, the RTF reached a political compromise among parties with very divergent interests. Certainly CUSC's members would have preferred a smaller fund or less growth in funding. 49/ Nonetheless, CUSC is willing to live with the result reached through the RTF process. Regrettably, however, many of the individual ILECs and ILEC industry associations evidently are not willing to live with that result.

Unrestricted growth in high-cost funding levels would place excessive burdens on the telecommunications consumers around the country who ultimately pay for this program, and could threaten the stability of the overall universal service regime. Therefore, the Commission and the Joint Board should firmly reject

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48/ *See FPC v. Hope Natural Gas*, 320 U.S. 591 (1944) (setting constitutional standard for "takings" in regulated industries); *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989) (same).

49/ For example, CUSC appreciates the forthright and candid comments filed by DigitalLouisiana.org asserting that the old subsidy system results in universal service fees that are higher than necessary and that sweeping technological changes in the telecommunications industry necessitates a "complete rethinking" of connectivity issues in rural America. DigitalLouisiana.org at 1. *Accord* Maine and Vermont at 12 ("It is difficult to move away from any entrenched system of subsidy. ... The Telecommunications Act ... with its clear mandates to foster competition and ensure sufficiency of support for ALL rural and high cost areas, requires that we move, even if deliberately, away from systems that are inconsistent with those goals and towards uniform, targeted systems of support.") (emphasis in original) *Id.*

the ILECs' overreaching clamor for ever greater funds. The RTF recommends an equitable accommodation in making certain adjustments that would effectively result in a one-time approximately 15% increase in the amounts most rural telephone companies receive, but retaining a reasonable formula to constrain the total amount of future funding growth. 50/ Indeed, one could easily argue that a number of the RTF-recommended provisions that would increase the funding size, including the so-called "safety net additive" as well as the adjustment to the corporate operations expense limitation, are overly generous. 51/ The Commission should disregard the arguments of the numerous rural ILECs wishing to eliminate constraints on future fund growth. 52/

B. The FCC and the Joint Board Should Avoid Creating Artificial Incentives for Non-Rural ILECs to Sell Exchanges

Section 54.305 of the Commission's rules properly prevents the prospect of increased universal service funding from becoming an artificial incentive for non-rural ILECs to sell exchanges. CUSC does not object to the adoption of the RTF's proposed minor modifications to this rule as a "safety valve" funding mechanism, so long as any additional support is provided consistent with the principles

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50/ *Ex parte* letter from William R. Gillis, Chair, RTF, to Magalie Roman Salas, FCC, CC Docket No. 96-45, filed Nov. 10, 2000, attachment at 1.

51/ RTF Recommendation at 27-29; *see* California PUC at 4-5; New York *et al.* at 2-4; NASUCA at 3.

52/ Bristol Bay *et al.* at 2; Citizens Communications Co. at 2-3; Iowa Telecom. Services, Inc. at 3-5, 6, 9; Montana Telecom. Ass'n at 3; NTCA at 6; Oregon Exchange Carrier Ass'n at 1; Washington Independent Tel. Ass'n at 1;

enunciated by the RTF. 53/ The following RTF-recommended principles are most significant: (1) mere transfer of ownership should not result in increased support; (2) the potential availability of additional support should not artificially inflate the price of sale/transfer transactions; (3) additional support should be available only for post-transaction investment; and (4) the safety valve must be capped. 54/

But many of the rural ILECs disregard all these carefully constructed principles, and instead call for the elimination of Section 54.305. 55/ But contrary to the ILECs' arguments, eliminating this rule would do nothing to create an incentive for economically efficient investment in rural areas. Rather, eliminating Section 54.305 would create enormous uneconomic incentives for large, potentially more efficient carriers to sell exchanges to smaller, less efficient carriers, and would lead to substantial increases in the overall amount of universal service funding. The Commission must reject the ILECs' unsound argument.

C. High Cost Fund III Must be Explicit and Portable to Competitive ETCs, and Limited to Revenues Definitively Identified as Implicit Support

CUSC supports the RTF recommendation to establish a so-called "High Cost Fund III" ("HCF III") as a vehicle for eliminating implicit universal service support from rural ILECs' interstate access charges, and instead make all

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53/ RTF Recommendation at 29-30.

54/ *See id.*

55/ *See, e.g.*, Citizens at 4-5; Iowa Telecom. Services, Inc. at 3-5; NTCA at 17-18; Western Alliance at 11.

such support explicit and portable. 56/ As the Commission has recognized, converting implicit support to explicit, portable support is critically necessary in order to make all support available to ETCs in a competitively neutral manner. 57/ Thus, CUSC joins the RTF in calling upon the Commission to take the necessary steps to remove implicit support from rural ILECs' access charges and to establish HCF III as soon as is reasonably practicable.

CUSC agrees with most of the HCF III principles recommended by the RTF. In particular, CUSC agrees that HCF III support should be distributed to all ETCs – competitive entrants as well as ILECs – on a competitively neutral, per-line basis; that HCF III disbursements should be geographically deaveraged and targeted; and that HCF III should be funded through nondiscriminatory assessments on all interstate carriers. 58/

However, CUSC disagrees with the RTF's recommendation to establish HCF III based on "the difference between current interstate access revenues and the repriced interstate revenues" of rural ILECs. 59/ This approach, like the CALLS plan, makes the unfounded assumption that all residual access revenues not recovered through the rebalanced access charges constitute appropriate universal service subsidies. Instead, CUSC urges the Commission to establish an

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56/ RTF Recommendation at 37-38.

57/ *CALLS Order* at ¶¶ 190-94.

58/ RTF Recommendation at 31.

analytical framework to determine how much of those revenues properly should be treated as universal service support and made explicit. Revenues that the ILECs are currently receiving, but that cannot be justified as universal service support, either should remain in access charges, if justified, or should be treated as excess revenues and disallowed.

In addition, CUSC disagrees with the RTF's recommendation to leave HCF III "uncapped" and to adjust it annually based on rural ILECs' annual rate-of-return revenue requirement filings. 60/ In an increasingly competitive environment, no carrier should be entitled to a revenue guarantee, yet that is exactly what such a structure for HCF III would give rural ILECs. Moreover, leaving this new fund uncapped raises the risk that consumers could be exposed to unlimited increases in funding burdens. Rather, CUSC urges the Commission to establish a reasonable cap for HCF III, analogous to the $650 million cap adopted for the Interstate Access-Related Fund adopted in the CALLS Order. 61/ The Commission should keep in mind its sensible conclusion:

> Because increased federal support would result in increased contributions and could increase rates for some consumers, we are hesitant to mandate large increases in explicit federal support . . . in the absence of clear evidence that such increases are necessary either to preserve universal service, or to protect

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59/ *Id.* (recommended principle #3).

60/ *Id.* (recommended principles #3 and #7).

61/ *CALLS Order* at ¶ 201.

affordable and reasonably comparable rates, consistent with the development of competition. 62/

D. The Record is Not Sufficient to Determine Whether and How Much to Increase Funding for Deployment of Advanced or Information Services

CUSC does not necessarily disagree with the RTF's very general recommendation favoring a "support mechanism that inherently provides incentives for the infrastructure investments necessary for providing access to advanced services." 63/ But the RTF's only specific suggestion for how to implement this general recommendation (as well as the related recommendation on access to information services) 64/ is a single sentence to the effect that "[t]he indexed cap should be resized whenever the definition of supported services is changed." 65/ With all due respect, CUSC submits that this does not provide a sufficient record basis for the FCC or the Joint Board to make any specific changes to the methodology for computing high-cost support.

Accordingly, CUSC agrees with the parties who argue that no such changes should be implemented at this time. 66/ CUSC agrees with the Public Utilities Commissions of California, New York, Connecticut, Illinois, and Maryland

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62/ *Seventh Report & Order*, 14 FCC Rcd at 8111, ¶ 69.

63/ RTF Recommendation at 22.

64/ *Id.* at 23.

65/ *Id.* at 27.

66/ *See, e.g.*, WorldCom at 5-6; Sprint at 2.

that the RTF has "put the cart before the horse" and based its sweeping recommendation on a paucity of facts. 67/ In light of this, CUSC recommends that the Commission exercise prudence by declining to make any changes in funding levels to support deployment of advanced or information services.

III. CONCLUSION

For the reasons stated above, the Competitive Universal Service Coalition urges the Commission, as it deliberates the merits of the Rural Task Force recommendation, to: (1) ensure that competitive neutrality and funding portability continue to be guiding principles for universal service reform; (2) reject certain parties' arguments to implement the RTF proposal in ways that might create new impediments to competitive entry; and (3) establish a high-cost universal service fund that is explicit, moderately sized and targeted to those with the greatest need.

67/ Comments of the California Public Utilities Commission ("California PUC") at 4-5. The California PUC correctly asserts that the RTF makes no effort to establish that current support levels are insufficient to justify its recommendations for increased support and has not made an evidentiary showing justifying the need for increased support. *Id. Accord* Joint Comments of the New York Department of Public Service, Connecticut Department of Public Utility Control, Illinois Commerce Commission and Maryland Public Service Commission at 5.

Respectfully submitted,

COMPETITIVE UNIVERSAL SERVICE COALITION

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November 30, 2000
CORRECTED VERSION: December 11, 2000

CERTIFICATE OF SERVICE

I, Cecelia Burnett, do hereby certify that on this 11th day of December, 2000, copies of the foregoing "Competitive Universal Service Coalition Reply Comments On The Rural Task Force Recommendation" were delivered by first class mail, unless otherwise indicated, to the following parties:

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December 11, 2000

Magalie Roman Salas
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445 Twelfth St., S.W.
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Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Salas:

The Reply Comments on the Rural Task Force Recommendation filed on November 30, 2000 by the Competitive Universal Service Coalition inadvertently contained an editing error. The error is corrected in the attached filing. Please disregard the original filed version and accept the attached corrected version in its place.

We regret this error. Please contact me if you have any questions.

Respectfully submitted,

David Sieradzki

David L. Sieradzki
Counsel for the Competitive Universal Service Coalition

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

COMPETITIVE UNIVERSAL SERVICE COALITION REPLY COMMENTS ON THE RURAL TASK FORCE RECOMMENDATION

COMPETITIVE UNIVERSAL
SERVICE COALITION

Association for Local Telecommunications Services
AT&T Wireless Services
Competitive Telecommunications Association
Nucentrix Broadband Networks, Inc.
Personal Communications Industry Association
Smith Bagley, Inc.
U.S. Cellular Corporation
Verizon Wireless
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November 30, 2000
CORRECTED VERSION: December 11, 2000

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EXECUTIVE SUMMARY

The Competitive Universal Service Coalition ("CUSC") applauds the efforts of the Rural Task Force ("RTF") in bringing together varied and competing interests and forging a solid compromise proposal. CUSC is eager to work with the Joint Board and the Federal Communications Commission to craft rules that are consistent with the following fundamental principles:

1. The universal service funding structure must be competitively neutral and must allow competitive entrants to serve rural, high-cost communities currently served by rural telephone companies.
2. The universal service fund must be targeted and economically efficient, and must not be allowed to grow to an excessive amount that would place an undue burden on consumers.

Toward these goals, CUSC supports adoption of the RTF's recommendations as a package. CUSC submits that the Joint Board and the Commission should reject parties' arguments for changes to the RTF proposals that would violate these principles, but in light of these arguments, CUSC submits a few suggestions of its own for minor modifications to the RTF proposal.

First, CUSC generally supports disaggregation of rural telephone companies' study areas and targeting of support. But it will be absolutely critical for regulators to carefully oversee the details of how disaggregation is implemented to ensure that incumbent carriers do not abuse the process to cross-subsidize their own services and freeze out competitive entry.

Second, CUSC strongly supports the RTF's pro-competitive recommendations to: (1) eliminate the funding lag for competitive eligible tele-communications carriers ("ETCs"); (2) enable all parties to easily determine how much funding per line is available in each geographic location; and (3) fund wireless ETCs based on their customers' residential or business locations. Similarly, the RTF proposal must *not* be implemented in ways that create new impediments to competitive entry. Thus, states must not be permitted to rely on the change in funding methodology triggered by competitive entry as an excuse to deny ETC designation. Moreover, the FCC rules on ETC criteria must not be expanded to include unwarranted requirements relating to advanced or information services.

Finally, to protect consumers around the country from excessive universal service contribution burdens, the overall size of the high-cost fund must not be allowed to grow by more than the amount recommended by the RTF. Thus, rural incumbents' arguments for potentially vast increases in universal service funding upon the sale of rural exchanges must be rejected. The Commission must also structure "High Cost Fund III" in a manner that removes implicit subsidies from rural ILECs' access charges and makes all funding explicit and portable, but does not give rural ILECs an unwarranted revenue guarantee, which would be improper in an increasingly competitive environment.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMPETITIVE UNIVERSAL SERVICE COALITION
REPLY COMMENTS ON THE
RURAL TASK FORCE RECOMMENDATION

The Competitive Universal Service Coalition ("CUSC"), 1/ by counsel and in response to the Public Notice in the above-captioned proceeding hereby submits this Reply in response to the comments filed on the *Rural Task Force Recommendation*. 2/

CUSC applauds the efforts of the Rural Task Force ("RTF") in bringing together varied and competing interests and forging a solid compromise proposal. CUSC is eager to build on the RTF's efforts to assist the Joint Board and the FCC in crafting rules to address the universal service support needs of the rural, insular

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1/ The Competitive Universal Service Coalition includes the following companies and associations: Association for Local Telecommunications Services; AT&T Wireless Services; Competitive Telecommunications Association; Nucentrix Broadband Networks, Inc.; Personal Communications Industry Association; Smith Bagley, Inc.; U.S. Cellular Corporation; Verizon Wireless; VoiceStream Wireless Corporation; Western Wireless Corporation; and the Wireless Communications Association.

2/ *Federal-State Joint Board on Universal Service Seeks Comment on Rural Task Force Recommendation; Pleading Cycle Established*, CC Docket No. 96-45, Public Notice, FCC-00J-3 (rel. Oct. 4, 2000), seeking comment on *Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, rel. Sept. 29, 2000 ("RTF Recommendation").

and high-cost communities currently served by rural telephone companies. CUSC also recognizes that universal service funding policies for rural telephone companies may be different from those for non-rural companies, at least in the short-term. Nonetheless, CUSC strongly believes that universal service entry and funding policies, including the designation of competitive Eligible Telecommunications Carriers ("ETCs"), must not unfairly disadvantage competitive carriers seeking to enter areas served by rural telephone companies. Therefore, it is critical that the FCC and the Joint Board act to enable competitive ETCs to offer new universal service options to consumers in rural areas.

In these reply comments, we explain why: (1) competitive neutrality and funding portability must continue to be guiding principles for universal service reform; (2) the Joint Board and the FCC should reject certain parties' arguments to implement the RTF proposal in ways that might create new impediments to competitive entry; and (3) the RTF's recommendations regarding the size and growth of high-cost universal service funding levels should constitute a ceiling or maximum level, and rural incumbent local exchange carrier ("ILEC") arguments for unlimited increases in funding levels must be rejected. CUSC generally supports the RTF's recommendations and believes they should be adopted as a package. Nonetheless, given that most of the rural ILECs argued for substantial changes to the package, CUSC respectfully submits a few minor modifications that its members would support.

I. COMPETITIVE NEUTRALITY AND FUNDING PORTABILITY MUST CONTINUE TO GUIDE RURAL UNIVERSAL SERVICE POLICY

When Congress enacted the Telecommunications Act of 1996, one of its chief goals was to introduce competition in the provision of local telephone service to consumers in all parts of the country. When consumers have choice, Congress reasoned, prices will decline and new, innovative services will develop more rapidly. With Congress' mandate in mind, the Joint Board and the Commission have adopted competitive neutrality and funding portability as fundamental principles guiding the new universal service paradigm. 3/ It is beyond debate that these principles of competitive neutrality and funding portability must be retained, and the RTF correctly recognized that its recommendations had to be consistent with these overarching goals. 4/

The Joint Board and the Commission must therefore reject NTCA's and the Western Alliance's misguided arguments for abandoning the fundamental goal of funding portability. 5/ Without portable funding, local competition will never develop in areas currently served by rural telephone companies. Indeed, the non-portable universal service system in effect prior to the enactment of the 1996

3/ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 (Joint Board 1996) ("*First Recommended Decision*"); *Federal-State Joint Board on Universal Service*, Report & Order, 12 FCC Rcd 8776 (1997) ("*First Report & Order*").

4/ RTF Recommendation at 7, 14-15, 33, 37; *Mission Statement, Objectives and Principles for Developing a Recommendation*, Rural Task Force Principles for Developing Recommendations (Dec. 12, 1998) at www.wutc.wa.gov/rtf.

5/ National Telephone Cooperative Ass'n ("NTCA") at 10-11; Western Alliance at 13.